



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10
1200 Sixth Avenue
Seattle, WA 98101

OCT 01 2008

**NOTICE OF POTENTIAL LIABILITY
AND USE OF SPECIAL NOTICE NEGOTIATION PROCEDURES**

VIA FEDERAL EXPRESS

Union Pacific Railroad Corporation
c/o Robert M. Grimaila
Safety Environment and Security
1400 Douglas St., Mail Stop 1180
Omaha, NE 68179

Re: Wallace Yard and Spur Lines, Shoshone County, Idaho

Dear Mr. Grimaila:

Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Section 107(a), this letter confirms notice of potential liability that Union Pacific Railroad Corporation (UPRR) may have incurred with respect to the site referenced above. Prior notice of potential liability related to an area within Shoshone County, Idaho, presently known as the "Wallace Yard" and associated railroad spur lines along Canyon Creek and Ninemile Creek (collectively, "the Site") was provided to UPRR by letter dated February 28, 2002. Consistent with CERCLA Section 122(e), 42 U.S.C. § 9622(e), this letter also invites UPRR to participate in negotiations directed at implementing a selected response action for the Site and for reimbursement of related past and future response costs.

NOTICE OF POTENTIAL LIABILITY

The United States Environmental Protection Agency (EPA) has documented the release or threatened release of hazardous substances at the Site. EPA has spent public funds in conjunction with the investigation of such releases or threatened releases at the Site. EPA has selected actions to address such releases, and may perform these actions pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), and other laws, potentially liable parties may be obligated to implement response actions deemed necessary by EPA to protect health, welfare, or the environment, and may be liable for all costs incurred by the government in responding to any release or threatened release at the Site. Such actions and

costs may include, but are not limited to, expenditures for investigations, planning, response, oversight, and enforcement activities. EPA may issue an administrative order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), to require parties to commence cleanup activities. Failure to comply with an administrative order issued under Section 106(a) of CERCLA may result in a fine of up to \$32,500 per day under Section 106(b) of CERCLA, or imposition of treble damages under Section 107(c)(3).

EPA has evaluated information in connection with the Site. Based on this information, EPA believes that UPRR may be a Potentially Responsible Party (PRP) with respect to this Site. PRPs under CERCLA include current and former owners and operators of the Site as well as persons who arranged for disposal or treatment of hazardous substances sent to the Site, or persons who accepted hazardous substances for transport to the Site.

SITE RESPONSE ACTIVITIES

PRPs for the Site include UPRR and the BNSF Railway Company (BNSF). In 2002, EPA and the Idaho Department of Environmental Quality (DEQ) entered into an Administrative Order on Consent with UPRR and BNSF to conduct an Engineering Evaluation/Cost Analysis (EE/CA) for the Site. After completion of the EE/CA, EPA selected response actions for the Site, as documented in an Action Memorandum dated March 6, 2008. The process for selecting these response actions followed the requirements for non-time critical removal actions, set forth in the National Contingency Plan, 40 C.F.R. Part 300.415.

SPECIAL NOTICE AND NEGOTIATION MORATORIUM

EPA has determined that use of CERCLA Section 122(e) special notice procedures will facilitate a settlement among EPA, DEQ, and the PRPs for this Site. Therefore, under CERCLA Section 122, 42 U.S.C. § 9622, this letter triggers a 60-day moratorium on certain EPA response activities at the Site. During this 60-day period, the PRPs, including UPRR, are invited to participate in formal negotiations with EPA. UPRR and BNSF are specifically encouraged to voluntarily negotiate a settlement to conduct or finance the selected response actions for the Site. The 60-day negotiation period ends on **November __, 2008**. The 60-day negotiation moratorium may be extended for an additional 60 days if EPA determines the PRPs have provided EPA with a good faith offer to conduct or finance the selected response actions. If settlement is reached between EPA and the PRPs, the settlement will be embodied in a consent decree to be lodged with and approved by the federal court.

DRAFT CONSENT DECREE

A copy of EPA's draft consent decree for the Site is enclosed. This draft is based upon the EPA/DOJ Model Consent Decree for Remedial Design/Remedial Action (RD/RA). As a part of the consent decree for this Site, a statement of work (SOW) must also be incorporated into the final consent decree. A draft SOW for the Site is also enclosed.

GOOD FAITH OFFER

As previously indicated, the negotiations moratorium triggered by this letter will be extended for 60 days if, within the first 60 days, the PRPs submit a good faith offer to EPA. A good faith offer to finance or conduct the selected response actions must be presented as a written proposal that demonstrates the PRPs' qualifications and willingness to finance or conduct the required work and includes the following elements:

1. A statement of willingness by the PRPs to conduct or finance the selected response actions which is generally consistent with the Action Memorandum and draft consent decree for this Site.
2. A reply to the draft consent decree and SOW.
3. A demonstration of the PRPs' technical capability to carry out the selected response actions, including the identification of the firms that may actually conduct the work or a description of the process they will use to select the firms.
4. A demonstration of the PRPs' ability to finance the required work.
5. A statement of the PRPs' willingness to reimburse EPA for past costs and oversight costs at the Site; and
6. The name, address, and telephone number of the individuals who will represent the PRPs in negotiations.

ADMINISTRATIVE RECORD

Pursuant to Section 113(k) of CERCLA, 42 U.S.C. § 9613(k), EPA must establish an administrative record file that contains documents that form the basis of EPA's decision of the selection of a response action for a site. The administrative record for this Site is available to the public for inspection and comment. Administrative record files are maintained at the EPA Region 10

Superfund Records Center in Seattle, Washington.

INFORMATION TO ASSIST RESPONSIBLE PARTIES

EPA would like to encourage good faith negotiations between the PRPs and EPA, as well as among the PRPs. To assist the PRPs in preparing a proposal and in negotiating with EPA concerning this matter, EPA is providing the following information:

1. This Notice of Potential Liability and Use of Special Notice Negotiation Procedures is being sent to the following parties and addressees:

Union Pacific Railroad Corporation
c/o Robert M. Grimaila
Safety Environment and Security
1400 Douglas St., Mail Stop 1180
Omaha, NE 68179

BNSF Railway Company
c/o Pamela Nehring
2500 Lou Menk Drive
Fort Worth, TX 76131-2828

2. No later than 1890, UPRR and BNSF, or affiliated and predecessor companies, including, respectively, the Oregon-Washington Railroad & Navigation Company (OWR&N) and the Northern Pacific Railway Company (NP), each began rail service on "spur" lines from Wallace, Idaho, along Canyon Creek to mines near Burke, Idaho. Around 1900, NP also began rail service on a spur line to mines along nearby Ninemile Creek.
3. In the early 1890s, UPRR and BNSF, or affiliated and predecessor companies, each began using an area near Wallace, Idaho, known as the Wallace Yard, for railcar storage, switching, and other operations.
4. In 1919, NP leased part of the area known as the Wallace Yard to the Hercules Mining Company for purposes including the milling of ores and "depositing, storing and impounding any and all tailings." The lease provided that it was subject to a term of 50 years.
5. In 1980, BNSF transferred real property including the Wallace Yard and the Canyon Creek and Ninemile Creek spur lines to OWR&N via quitclaim deed.
6. In 2000, UPRR entered a consent decree with the United

States, State of Idaho, and Coeur d'Alene Tribe providing for certain CERCLA response actions along the 72-mile railroad right-of-way through the Coeur d'Alene Basin, including a segment through the Wallace Yard. In consideration of obligations assumed under the consent decree, No. CV 91-0342-N-EJL, UPRR received certain liability protections, including contribution protection and covenants not to sue. The United States, however, reserved its rights against UPRR for claims related to the Wallace Yard and spur lines.

PRP RESPONSE AND EPA CONTACT

You are encouraged to contact EPA within 30 days of receipt of this letter to indicate your willingness to participate in future negotiations at this Site. Moreover, you have 60 calendar days from this notice to provide EPA, in writing, with a good faith offer demonstrating your willingness to conduct or finance response activities at the Site and to participate in possible future negotiations. If EPA does not receive a timely response, EPA will assume you do not wish to negotiate a resolution of your liabilities in connection with the response, and that you have declined any involvement in performing the response activities. You may be held liable under Section 107 of CERCLA, 42 U.S.C. § 9607, for the cost of the response activities EPA performs at the Site and for any damages to natural resources.

Your written response to this notice letter should be sent to the following attention:

Clifford J. Villa
U.S. EPA Region 10
1200 Sixth Ave., Suite 900, ORC-158
Seattle, WA 98101

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final EPA positions on any matter set forth herein. If you or your client have any questions pertaining to this matter, please direct them to Mr. Villa at (206) 553-1185.

Sincerely,



Cami Grandinetti, Unit Manager
Environmental Cleanup Office

Enclosures